

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Debra Cleaver	Team: Team # 7	CCRB Case #: 200404335	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 05/09/2004 2:30 PM, Monday, 05/10/2004	Location of Incident: § 87(2)(b)	Precinct: 69	18 Mo. SOL 11/9/2005	EO SOL 11/9/2005	
Date/Time CV Reported Mon, 05/10/2004 2:57 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 05/10/2004 2:57 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POF Renee Wyattshiver	10528	900010	069 PCT
2. POF Lashonda Dyce	00000	932152	069 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Deidre Clarke	30587	929903	069 PCT
2. POM Marco Rosales	24872	931093	069 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Lashonda Dyce	Abuse: POF Lashonda Dyce threatened to arrest § 87(2)(b)	§ 87(2)(b)
B.POF Renee Wyattshiver	Abuse: POF Renee Wyattshiver threatened to arrest § 87(2)(b)	§ 87(2)(b)

Synopsis

§ 87(2)(b) is a § 87(2)(b) old black woman. At the time of the incident, she lived at § 87(2)(b) Brooklyn, NY 11236, with her § 87(2)(b) son, § 87(2)(b) and her § 87(2)(b) ld daughter, § 87(2)(b). § 87(2)(b) has another daughter, § 87(2)(b) who resides elsewhere in Brooklyn. On May 7, 2004, § 87(2)(b) was arrested for slamming his sister § 87(2)(b) against a door-frame and pushing her down a flight of stairs. § 87(2)(b) declared her daughter the “guilty” party, refused to allow § 87(2)(b) to return to the home, and changed the door locks. On May 9, 2004, PO Renee Wyatt-Shiver threatened § 87(2)(b) with arrest for unlawfully evicting her daughter. On May 10, 2004, PO Lashonda Dyce likewise threatened § 87(2)(b) with arrest.

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) filed this complaint with the CCRB on May 10, 2004. Initially, she stated that her § 87(2)(b) had been arrested for fighting with her daughter, § 87(2)(b) on May 7, 2004. During subsequent phone conversations, she stated that § 87(2)(b) had fought with her daughter. § 87(2)(b) was certain that § 87(2)(b) fought with § 87(2)(b) and unsure as to why she had initially cited § 87(2)(b) as an involved party. § 87(2)(b) was interviewed at 610 East 108th Street, Brooklyn, NY on May 19, 2004, where she steadfastly identified § 87(2)(b) as the daughter in question.

On Friday, May 7, 2004, § 87(2)(b)'s son, § 87(2)(b) called his mother at work to tell her he was about to be arrested for assaulting his sister, § 87(2)(b). § 87(2)(b) arrived at her home (located at § 87(2)(b) Brooklyn, NY 11236), as § 87(2)(b) was being arrested by PO Robert Saenz (identified through the arrest paperwork) and his partners. § 87(2)(b) yelled at the officers not to arrest her son, citing her daughter as the “guilty” party. In her own words, § 87(2)(b) continued to “carry on” until PO Saenz threatened to arrest her. § 87(2)(b) calmed down and was not arrested; moreover, § 87(2)(b) found no fault with PO Saenz’s actions, and did not wish to file a complaint against him. Both § 87(2)(b) and § 87(2)(b) then were taken to the 69th Precinct. § 87(2)(b) went down to the Precinct some time later and spoke with PO Saenz. He informed her that § 87(2)(b) wished to leave home and would like to return to gather her things. § 87(2)(b) refused to let § 87(2)(b) back into the house. PO Saenz asked her to pack § 87(2)(b)'s things for her, and leave them in front of the house. § 87(2)(b) complied, and watched over the clothing until she saw § 87(2)(b)'s cab pull in front of the house. Later that same evening, § 87(2)(b) paid a local locksmith to change the household locks.

On Saturday, May 8, 2004, § 87(2)(b) was arraigned at the § 87(2)(b) Criminal Court. An Order of Protection was issued against him, specifying that he was not to return to § 87(2)(b).

On Sunday, May 9, 2004, two female police officers (later identified as PO Deidre Clarke and PO Wyatt-Shiver) arrived at § 87(2)(b)'s house. PO Wyatt-Shiver informed § 87(2)(b) that § 87(2)(b) did not have money for a hotel, and wished to return home. § 87(2)(b) refused to let § 87(2)(b) return; PO Wyatt-Shiver replied that she could be arrested for not letting § 87(2)(b) back in. PO Wyatt-Shiver also stated that § 87(2)(b) had “evicted” § 87(2)(b). § 87(2)(b) denied this, and explained that § 87(2)(b) had left voluntarily. PO Wyatt-Shiver reiterated that § 87(2)(b) could be arrested if she refused to let § 87(2)(b) back in the home. The officers then left.

On Monday, May 10, 2004, § 87(2)(b) again called his mother at work to inform her that “cops were banging on the windows.” § 87(2)(b) was “terrified” that the officers had returned to arrest him. § 87(2)(b) called the 69th Precinct and complained to the desk officer that she was being “harassed.” The desk officer was very “nasty” to her. § 87(2)(b) believed this officer’s name was “Lieutenant Besso.” (It was later determined through the 69th Precinct roll-call that § 87(2)(b) spoke with Sergeant Diesso.)

Later that same evening, two uniformed officers (one male and one female) arrived at § 87(2)(b)'s house. § 87(2)(b) and § 87(2)(b) met the officers at the door. § 87(2)(b) believed the female officer’s name was “PO Dyce” and the male officer’s name was “PO Gonzalez” (later identified through roll-call as PO Rosales). PO Dyce

threatened § 87(2)(b) with arrest for refusing to let § 87(2)(b) back into the house. § 87(2)(b) reiterated her objection, and stated that she had already changed the locks. PO Dyce demanded a key, and PO Gonzalez explained that the Lieutenant had ordered them to treat the situation as an “eviction.” Both officers then stated that § 87(2)(b) would have to leave residence, so that § 87(2)(b) could return. § 87(2)(b) became agitated and yelled at the officers. PO Dyce told her she would be arrested if she didn’t calm down. § 87(2)(b) then voluntarily complied with the officers’ request to vacate the home. The officers remained at § 87(2)(b) until § 87(2)(b) left the premises.

Results of Investigation

Civilian Interviews

§ 87(2)(b) is an § 87(2)(b)-old high school student. She has lived at § 87(2)(b) for several years now, and has always resided with her mother. She was interviewed via telephone on May 24, 2004 (Enclosure 9). § 87(2)(b) expressed unwillingness to discuss the altercation with § 87(2)(b) but confirmed that the incident occurred on Friday, May 7, 2004, and that the officers took her down to the precinct. § 87(2)(b) stated that her mother told the officers that she was not allowed to return home. § 87(2)(b) returned home that evening to retrieve her clothing, which had already been packed and placed in front of the home. § 87(2)(b) then went to the Galaxy Motel to think about the situation; she did not intend to leave her home permanently, but knew that her mother wanted her out.

§ 87(2)(b) The officer told § 87(2)(b) that she should return to her mother’s house, and that her mother would have to let her in. The officer also told § 87(2)(b) to call 911 if she had any problems getting back into the house. § 87(2)(b) returned home on Monday, May 10, 2004, and called 911 twice that day to report that her sister, § 87(2)(b) would not let her into the house.

§ 87(2)(b) On May 19, 2004, an unsuccessful attempt was made to contact § 87(2)(b) in person at his house (located at § 87(2)(b) Brooklyn, NY 11236). After further investigation, it was determined that § 87(2)(b)’s statement would have no bearing on the final disposition of the allegations. As such, no further attempts were made to speak with § 87(2)(b).

Officer Interviews

PO Deidre Clarke

PO Deidre Clarke was interviewed at the CCRB on June 30, 2004 (Enclosure 15a-b). On May 9, 2004, PO Clarke accompanied Domestic Violence Officer PO Renee Wyatt-Shiver on several follow-up visits to local homes. There were no entries in her memobook regarding this particular incident, but PO Clarke stated that they arrived between 2:01pm and 3:40pm. PO Wyatt-Shiver spoke with § 87(2)(b) while her son, § 87(2)(b) stood nearby. § 87(2)(b) was very upset about § 87(2)(b)’s recent arrest, and blamed her daughter, § 87(2)(b) for the incident. PO Wyatt-Shiver explained that § 87(2)(b) had to let § 87(2)(b) back into the house. § 87(2)(b) refused. PO Wyatt-Shiver explained that § 87(2)(b)’s refusal constituted an eviction; she also explained that § 87(2)(b) could be arrested for evicting her daughter. § 87(2)(b) remained obstinate, prompting PO Wyatt-Shiver to reiterate the potential for an eviction-related arrest. PO Clarke believes that PO Wyatt-Shiver stated, “if we have to come back here for this, we’ll arrest you.” PO Clarke did not speak during this visit.

On May 10, 2004, PO Clarke and PO Neysmith returned the next day in response to a 911 call. § 87(2)(b) had called the police when her sister, § 87(2)(b) refused to let her into the house. § 87(2)(b) was waiting in front of the house, and there was no response when the officers rang the bell. PO Neysmith filled out a Domestic Incident report, and the officers left.

PO Renee Wyatt-Shiver

PO Renee Wyatt-Shiver was interviewed at the CCRB on July 6, 2004 (Enclosure 16a-b). She explained that § 87(2)(b) do not carry memobooks, but stated that she remembered the incident.

On Thursday, May 6, 2004, PO Wyatt-Shiver received a call from § 87(2)(b) explained that her mother, § 87(2)(b) had kicked her out for fighting with her brother, § 87(2)(b) had spent two nights in a motel, but had run out of money and wished to return home. PO Wyatt-Shiver told § 87(2)(b) that she was legally allowed to return home. PO Wyatt-Shiver advised the desk officer of this phone call; the desk officer, in turn, assigned a patrol car to ensure § 87(2)(b)'s safe return.

On May 9, 2004, PO Wyatt-Shiver was partnered with PO Deidre Clarke. The officers were conducting follow-up visits to households recently involved in domestic incidents. The officers arrived at § 87(2)(b)'s home at approximately 2:30pm. PO Wyatt-Shiver spoke with § 87(2)(b) while her son § 87(2)(b) stood nearby. § 87(2)(b) had already returned home, but was not present at this time. § 87(2)(b) was unhappy that § 87(2)(b) had returned; she stated that § 87(2)(b) had a tendency to fight with § 87(2)(b). PO Wyatt-Shiver explained to § 87(2)(b) that her daughter had a legal right to be in the home. PO Wyatt-Shiver advised § 87(2)(b) that she would have to go to court and file a petition if she wanted to legally remove § 87(2)(b) from the home. If § 87(2)(b) removed § 87(2)(b) from the residence without properly filing with the court, she could be arrested for eviction.

At this point, PO Wyatt-Shiver was unsure if an Order of Protection had been issued against § 87(2)(b). She asked to see the papers § 87(2)(b) had received in court, but § 87(2)(b) was unable to produce these documents. PO Wyatt-Shiver explained that § 87(2)(b) would have to leave the residence if he had signed an Order of Protection. PO Wyatt-Shiver again urged § 87(2)(b) to "do things right and go through the Courts" before wishing her a Happy Mother's Day and leaving.

Conclusions and Recommendations

Officer Identification

All of the involved officers were positively identified through police documents or their own statements. PO Robert Saenz, who effected § 87(2)(b)'s arrest on May 7, 2004, was identified through the arrest paperwork. His memobook also lists the arrest. PO Clarke and PO Wyatt-Shiver both acknowledged being present for the May 9th, 2004 incident. PO Clarke further confirmed that she and her regular partner, PO Howard Smith, returned on May 10, 2004. This is corroborated by PO Clarke's memobook entries. This is further confirmed by the Domestic Incident Report completed by PO Smith on the same date. Sergeant Diesso was positively identified through the 69th Precinct's Tour 2 roll-call, which lists him as the desk officer for that tour. PO Lashonda Dyce and her partner PO Marco Rosales were identified through the 69th Precinct Tour 3 roll-call. These two officers were on duty, and assigned to the precinct sector in which § 87(2)(b) lives, on the night of May 10, 2004; additionally, their names matched those provided by § 87(2)(b).

Complainant CCRB History

This complaint is the first one filed by § 87(2)(b).

Officer CCRB Substantiation History

PO Renee Wyatt-Shiver has two substantiated CCRB cases. Case #9201684 has a substantiated force allegation (flashlight as club); case #9502260 has a substantiated abuse allegation (gun drawn).

PO Lashonda Dyce has no substantiated CCRB cases.

Determination of Fact

Few facts of this case are in dispute. It is undisputed that: (1) § 87(2)(b) and his sister, § 87(2)(b) had a physical altercation on May 7th, 2004, during which § 87(2)(b) slammed his sister into a doorframe and pushed her down a flight of stairs; (2) § 87(2)(b) then called 911 to request assistance; and (3) § 87(2)(b) was then arrested by PO Saenz, who generated a Domestic Incident Report and an Arrest Report.

§ 87(2)(g) § 87(2)(b) It is clear, however, § 87(2)(b) wished her daughter to leave, packed her daughter's clothing, and placed this clothing on the porch. § 87(2)(b) retrieved her clothing on May 7th, 2004, and then retired to the Galaxy Motel, in East New York. § 87(2)(b) spent the night of May 7th in jail, and was arraigned on May 8th. He was issued an Order of

resided with her mother for several years; it is clear that § 87(2)(b) had a legal claim on the residence, and had been illegally evicted by her mother.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

Allegation B, Abuse of Authority: PO Lashonda Dyce threatened § 87(2)(b) with arrest on May 10, 2004.

The investigation determined that PO Dyce's commanding officer had instructed her to treat the situation as an eviction. Upon arrival, § 87(2)(b) informed PO Dyce that she had already changed the locks, specifically to prevent § 87(2)(b) from reentering. As the above-cited Patrol Guide Procedure makes clear, § 87(2)(b) had illegally evicted her daughter by changing the door locks and not providing § 87(2)(b) with a key. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: